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House Human Services Committee

Impacts of COVID-19 on Long-Term Care Facilities: Consider the following issues in light of the COVID-19 pandemic:

1) Review the state's response to the pandemic, specifically as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. Examine the physical and mental health impacts of the visitation policy on long-term care residents.

STATE RESPONSE TO CORONAVIRUS GENERALLY

COVID-19 has presented an unprecedented challenge for the operations of long-term care providers supporting people with intellectual and developmental disabilities (IDD) in the state.

The pandemic occurred at a time where the Health and Human Services Commission (HHSC) was in a flux –

1) One executive commissioner exited, and an interim commissioner entered;
2) Key HHSC leadership was either new or the positions were vacant; and
3) Agency transformation led to teams of disaggregated generalists without the specific knowledge, expertise or authority to decisively provide guidance and timely support necessary to keep IDD providers afloat and keep people safe.

The failures by the state to recognize or understand the differences in the needs and challenges of different long-term care providers have presented an on-going problem for management of the pandemic. Commission staff who have tried to be responsive to the requests for support by providers on the frontline of the pandemic were frustrated by bureaucratic processes that slowed response times to a halt and often resulted in decisions that were not appropriate for the unique service delivery needs of IDD providers.

THE GROCERY LETTER ILLUSTRATION

For example, in late March IDD providers asked HHSC to issue a letter to present grocery stores to allow group homes to purchase enough groceries to feed quarantined service recipients. This was when grocery stores were placing limits on certain goods. Rather than issuing a template letter--which is what the IDD providers had recommended and had provided examples of from other states--HHSC created an administratively burdensome process for "applying" for a letter for each individual group home. A more reasonable template for HCS and ICF was finally made public over three weeks after providers had begun making this request. This was at a time where IDD providers were having to get very creative to access enough food to keep people fed. Precious time was lost because it seemed attorneys at HHSC were more concerned with liability than making sure people were getting enough food. And a simple letter with a simple goal went

through review by multiple departments but with no input allowed from provider stakeholders until the letter was publicly issued.

Emergency Rules

Guidance has also frequently changed throughout the pandemic and it has been an on-going source of frustration that providers have fought to keep up with safety guidelines while battling field surveyors enforcing their own interpretations of the guidance.

When HHSC issued emergency rules in response to coronavirus limited or no input was taken from providers and the rules were effective immediately. This left no time for hundreds of providers throughout the state to come into compliance prior to regulatory visits. Emergency rules and guidance issued by HHSC throughout the pandemic largely added requirements rather than waiving requirements and no funding was offered to support those additional requirements.

Largely because CDC guidance did not distinguish between settings types in managing the pandemic, no other official took the time to consider ways in which state guidance and then the emergency rules designed for large institutions could be problematic for non-institutional settings.

Visitation

Group homes in the HCS program and Intermediate Care Facilities (ICFs) are small settings serving people with intellectual and developmental disabilities (IDD) in the community. Most homes are three or four-bedroom homes less than 2,000 square feet.

Unlike nursing facilities where it is unlikely service recipients would go to a job every day or leave every weekend to visit family, service recipients in group homes and in ICFs are specifically given the freedom and choice to leave and return from their group homes whenever they desire for as long as they desire and providers are not allowed to prevent service recipients from leaving nor returning, even if the person returns positive for coronavirus. Almost every positive case in group homes can be attributed to staff (before mask mandates) or service recipients after returning to the group home from a weekend in their family homes. Providers are required to isolate people who have left the group home upon their return, but that can be difficult in a small home with individuals who have roommates or do not understand or comply with social distance and mask requirements. Few of us socially distance or wear masks in our own homes. People with IDD are no different and due to their cognitive disabilities are even less likely to follow state and federal guidelines. The answer to that problem has been to move suspected or confirmed service recipients to another home which also presents its own challenges with cost, staffing and availability of space.

State emergency rules treat these settings, essentially single-family homes, the same as nursing facilities leading to rules that are difficult to operationalize and confusing to articulate to family members and service recipients.

Service recipients can go to their neighbor's house with no restriction, but they cannot have a car parade in their front yard or have family members visit (at all until recently, under current rules through a plexiglass booth).

Providers are held responsible if something goes wrong, if someone tests positive, and it is left to providers to explain to family members why someone living in a group home can go to the mall but not receive guests.

Impacts of COVID-19 on Long-Term Care Facilities: Consider the following issues in light of the COVID-19 pandemic:

2) Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.

EMERGENCY WAIVERS

As discussed above, HHSC struggled to timely respond to the Governor's order to waive regulations of long-term care facilities. Rather, IDD providers experienced additional requirements placed on top of existing regulations, and no reimbursement for newly required personal protective equipment (PPE), staff overtime, hazard pay, plexiglass booths, staff testing, etc.

The state did make the following modifications, which should be extended, permanently waived or removed:

1. **HHSC waived limitations on service recipients receiving day habilitation in their own home or group home.**

   It is not clear whether this flexibility will be extended beyond the end of the public health emergency, but it is clear that coronavirus will likely not disappear overnight. Individuals, their families and providers cannot wait until the last minute for this issue to be addressed. For the foreseeable future, this allowance should be extended and billable.

2. **HHSC allowed service recipients to receive attendant care services (CFC) from a person who is living in the home.**

   This flexibility is already allowable in non-pandemic environments under managed care in STAR+PLUS. There is no clear reason why the two IDD waivers have been excluded until the pandemic. Allowing someone living in the home to deliver the service helps to address system-wide issues with recruitment and retention of direct care staff.

3. **HHSC waived requirements for physical signatures on certain documents and in-person meetings.**

   In the world of technology today, there is no reason a physical signature should be required on almost any document. HHSC waived requirements that a physical doctor's signature be on the annual functional assessment in ICFs, though no other program has a similar requirement. This should be permanently waived.

4. **HHSC auto-extended plans of care for all service recipients.**

   Plans of care usually require a service planning team meeting and signatures annually. Gaps between the end of the plan year and signatures on a new plan result in payment gaps, even when there are no changes to the person's services from one year to the next. Plans should be continued until meeting happens.

5. **HHSC temporarily waived certain regulatory surveys and residential visits, then allowed for certain portions of those activities to be conducted virtually.**
   The state should consider continuing virtual visits and limiting the frequency of such activities. Host home/companion care settings are most similar to foster care. Service recipients live with a "host" family, in a home-setting. Providers contract with one person in the household to be the "host" or "companion." Many service recipients are adult children living with their biological family members.

   Residential reviews of host homes are conducted annually and have progressively become more controlling and invasive into these homes and families. These reviews should either be eliminated for host homes (because Human Resource Code Chapter 161.076 excludes host homes from these reviews) or very limited in scope. The residential review checklist should be modified to recognize the difference between host home settings an group homes where, every person in the home is either a paid employee or service recipient.